

CrPC and BNSS: A Comparative Analysis

(including important changes by BSS)

OVERVIEW OF CHANGES

1973 Act	2023 Act
CrPC, “code”	Bharatiya Nagarik Suraksha Sanhita, 2023, “sanhita” used in place of “code”
38 chapters (including Ch. VIIA)	38 chapters
528 Sections (484), 2 schedules, 56 forms	533 Sections, 2 schedules, 56 forms
References to IPC	References to BNS

Statement of Objects and Reasons

- **scientific:** use of technology and forensic sciences in the investigation, summons, information
- **time bound:** investigation, trial and judgments
- **citizen centric:** supply of FIR copy and progress of investigation
- **trial:** summary trial mandatory for petty offences, accused examination through VC, magisterial system

Note: will not go into minor changes of terminologies, structure of provisions

CHAPTER I: PRELIMINARY

Definitions (S. 2 BNSS)

Insertions

- (a) “Audio-video electronic” – VC, identification, search & seizure
- (b) “bail” defined for first time – release of accused upon imposition certain conditions an officer/Court on execution of bond/bail bond
- (d) “bail bond” – release with surety
- (e) “bond” – personal bond, release without surety
- (f) Electronic communication – communication through electronic device
- (j) Investigation – Explanation: special Acts to prevail over Sanhita

Changes

Words and phrases used in the legislation but not defined – reference to BNS and IT Act

Omissions

Definitions of “metropolitan”, “prescribed”

CHAPTER II: CONSTITUTION OF CRIMINAL COURTS AND OFFICES

- Rationalised the court structure by removing unnecessary classifications:

Metropolitan Area, Metropolitan Magistrates, Assistant Sessions Judge (subordinate to SJ)

- Inserted proviso to S. 18 (Public Prosecutors)

(other states its Central Govt or State Govt after consultation with HC)

CHAPTER II: CONSTITUTION OF CRIMINAL COURTS AND OFFICES

New provisions in S. 20 - Directorate of Prosecution:

- Sub-s. 1(b)
 - District Directorate Prosecution (established by State govt)
- Change in eligibility criteria
 - Sub-s. 2(a) – Director/Dy.D of Prosecution - 15 yrs advocate or Sessions Judge
 - Sub-s. 2(b) – Asst. D of Prosecution - 7 years advocate or JMFC
- New Sub-s. (7), (8), (9), (10), (11)
 - Specific powers and functions [monitor and expedite cases of 10 yrs above (D), 7-10 yrs (DyD), upto 7 yrs (ADD)]
 - Responsibility for proceedings u/BNSS with the D/DD/AD
 - Remaining powers to be specified by State Govt

CHAPTER III: POWER OF COURTS

- Omitted jurisdiction in case of juveniles (s. 27 CrPC)
- Removed mention of Assistant Sessions Judge, Metropolitan Magistrates

CHAPTER IV: POWERS OF SUPERIOR OFFICERS OF POLICE AND AID TO THE MAGISTRATES AND THE POLICE

- Unchanged

CHAPTER V: ARREST OF PERSONS

Section	Changes
<p>When police may arrest without warrant (S. 41, 41A CrPC, now S. 35 BNSS)</p>	<ul style="list-style-type: none"> • Incorporation of 41A in 41 i.e. u/s 35 • Compassionate grounds: permission of DSP if arrest of infirm/above 60 for offence u/3 yrs punishment
<p>Control room at districts/ designated police officer (S. 41C CrPC, now S. 36 BNSS)</p>	<p>PCR at State and District levels</p> <p><u>Earlier:</u></p> <ol style="list-style-type: none"> 1. SG directed to display on notice boards outside district control rooms: name, address of arrested and name, designation of arresting cops 2. State Police HQ to maintain database of arrested (name, offence) for info of public <p><u>Now:</u></p> <ol style="list-style-type: none"> 1. Specific responsibility on police officer [“designate police officer in every district and every police station not below the rank of ASI”] to maintain information about persons arrested: name, address, offence 2. Details to be prominent displayed in any mode, including digital, in every PS and district HQ <p>Additions: Specific responsibility, Nature of offence, PS level not PCR, Digital mode</p> <p>Removals: Database at State HQ, Obligation on control rooms to display, No info about arresting cops</p>

CHAPTER V: ARREST OF PERSONS

Section	Changes
Arrest by private person and procedure on such arrest (S. 43 CrPC, now S. 40 BNSS)	<ul style="list-style-type: none">Change in language from “police officer shall re-arrest him” to “police officer shall take him in custody”
Arrest how made (S. 46 CrPC, now S. 43 BNSS)	<p><u>43(1) proviso (arrest of woman):</u> providing information to relatives, friends or any other person (disclosed by her) about place being held</p> <p><u>S. 43(3) Use of handcuffs:</u> <i>“(3) The police officer may, keeping in view the nature and gravity of the offence, use handcuff while effecting the arrest of a person who is a habitual, repeat offender who escaped from custody, who has committed offence of organised crime, offence of terrorist act, drug related crime, or offence of illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offences against children, offences against the State, including acts endangering sovereignty, unity and integrity of India or economic offences.”</i></p>

CHAPTER V: ARREST OF PERSONS

Section	Changes
Obligation of person making arrest to inform about the arrest, etc., to a nominated person (S. 50A CrPC, now S. 48 BNSS)	Addition: Information about arrest must be given to designated police officer in district too
Power to seize offensive weapons (S. 52 CrPC, now S. 50 BNSS)	“immediately after arrest is made”
Examination of accused by medical practitioner at the request of police officer. (S. 53 CrPC, now S. 51 BNSS)	<ul style="list-style-type: none">• RMP can make medical examination at the “request of any police officer” [earlier not below rank of SI]• Inserted “(3) The registered medical practitioner shall, without any delay, forward the examination report to the investigating officer.”• Qualifications under National Medical Commission Act, 2019 to apply to RMPs [earlier IMC Act 1956]
Examination of person accused of rape by medical practitioner. (S. 53A CrPC, now S. 52 BNSS)	Similar changes as above

CHAPTER V: ARREST OF PERSONS

Section	Changes
Examination of arrested person by medical officer. (S. 54 CrPC, now S. 53 BNSS)	Insertion of additional proviso: Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner: Provided further that if the registered medical practitioner is of the opinion that one more examination of such person is necessary, she may do so. [clarity needed]
Identification of person arrested. (S. 54A CrPC, now S. 54 BNSS)	“and the identification process shall be recorded by any audio-video electronic means” [earlier videographed]
Person arrested not to be detained more than twenty-four hours. (S. 57 CrPC, now S. 58 BNSS)	Clarified production before “Magistrate's Court, whether having jurisdiction or not ” [earlier not specific]

CHAPTER VI: PROCESSES TO COMPEL APPEARANCES

SUMMONS

New provisions:

- S. 63(ii) [Form of Summons]

Summons in an encrypted or any other form of electronic communication bearing image and seal of Court

- S. 64 [Summons how served]

Proviso to S. 64(1)

Provided that the police station or the registrar in the Court shall maintain a register to enter the address, email address, phone number and such other details as State Government may, by rules, provide.

Proviso to S. 64(2)

Provided that summons bearing the image of Court's seal may also be served by electronic communication in such form and in such manner, as the State Government may, by rules, provide.

CHAPTER VI: PROCESSES TO COMPEL APPEARANCES

New provisions:

- S. 65(1) [Service of summons on corporate bodies etc.]

Scope of officials specific and broadened: Director, Manager, Secretary or other officer of the company or corporation [earlier secretary, local manager, principal officer]

- S. 65(2)

Service on firms and association of individuals

- S. 70(3) [Proof of service]

All summons served through electronic communication under sections 64 to 71 shall be considered as duly served and a copy of such electronic summons shall be attested and kept as a proof of service of summons.

- S. 71(2)

On proof of delivery of service u/s. 70(3) of electronic communication to the satisfaction of the Court, the Court issuing summons may deem that the summons had been duly served.

Changes in Provision:

- Section 66 [service when persons summoned cannot be found]

Made gender neutral [earlier adult male]

CHAPTER VI: PROCESSES TO COMPEL APPEARANCES

WARRANT OF ARREST

New provision:

- S. 82(2) [Procedure on arrest of person against whom warrant issued]

(2) On the arrest of any person referred to in sub-section (1), the police officer shall forthwith give the information regarding such arrest and the place where the arrested person is being held to the designated police officer in the district and to such officer of another district where the arrested person normally resides.

[warrant executed outside district in which it was issued]

PROCLAMATION AND ATTACHMENT

New provisions:

- S. 84(4) [Proclamation for person absconding]

If proclamation is with respect to person accused of an offence with 10 yrs imprisonment or more, and person fails to appear, Court may pronounce them as a proclaimed offender

[earlier specific IPC offences were mentioned in this clause]

- S. 86 [Identification and attachment of property of proclaimed person]

The Court may, on the written request from a police officer not below the rank of the Superintendent of Police or Commissioner of Police, initiate the process of requesting assistance from a Court or an authority in the contracting State for identification, attachment and forfeiture of property belonging to a proclaimed person in accordance with the procedure provided in Chapter VIII.

CHAPTER VII: PROCESSES TO COMPEL THE PRODUCTION OF THINGS

New Provisions:

- S. 105 [recording of search and seizure through audio-visual electronic means]
 - Under this chapter or s. 186 CrPC
 - Preferably through cell phones
 - Police officer shall forward without delay to DM, SDM, JMFC
- S. 107 [attachment, forfeiture or restoration of property] is an extensive provision for attachment

S. 107(1)

- Police officer making investigation has reason to believe
- Property is derived/obtained from criminal activity
- With approval of SP or CP
- Make application to jurisdictional CJM
- For attachment of property

S. 107 (6)

If Court finds property is proceeds of crime, shall direct DM to distribute properties to persons affected by such crime

CHAPTER VIII: RECIPROCAL ARRANGEMENTS FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND FORFEITURE OF PROPERTY

- S. 166A has become S. 112 (Letter of request to competent authority)
- S. 166B has become S. 113 (Letter of request from a country or place outside India)

CHAPTER IX: SECURITY FOR KEEPING PEACE AND GOOD BEHAVIOUR

- [S. 129 \[Security for good behaviour from habitual offenders\]](#)

Laws referred to in section updated

CHAPTER XI: MAINTENANCE OF PUBLIC ORDER AND TRANQUILITY

- S. 149(1) [use of armed forces to disperse assembly]

The DM or any other EM authorised by him, who is present, may cause it to be dispersed by armed forces
[earlier EM of the highest rank who is present, now any EM]

- S. 154 [Person against whom conditional order for removal of nuisance proceedings are ongoing]

Person against whom such order is made may be permitted for appearance through audio-video conferencing

- S. 157 [Procedure when person shows cause]

Proviso: proceedings to be completed within 90 days, which can be extended to 120 days after recording reasons in writing

- Omission of S. 144A – prohibition on carrying of arms

CHAPTER XII: PREVENTIVE ACTION OF POLICE

Change in Provision:

- S. 170 [Arrest to prevent commission of cognisable offences]

Specific use of term “Judicial Magistrate”

New Provision:

- S. 172 [Persons bound to conform to lawful directions of police]

- (1) All persons shall be bound to conform to the lawful directions of a police officer given in fulfilment of any of his duty under this Chapter.
- (2) A police officer may detain or remove any person resisting, refusing, ignoring or disregarding to conform to any direction given by him under subsection (1) and may either take such person before a Magistrate or, in petty cases, release him as soon as possible within a period of twenty-four hours.

Inspection of weights and measures [erstwhile S. 153 CrPC] omitted

CHAPTER XIII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

- Earlier Ch. XII [S. 154 – 173 CrPC] now Ch. XIII [S. 173 – 196 BNSS]
- Many changes in content
- Logical sequence of sections remains same, except:
 - S. 166, 166A and 166B shifted under Ch. 8 as S. 112, 113 BNSS respectively (Reciprocal Arrangements)

CHAPTER XIII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

[Change in Provision:](#)

S. 173 [FIR]: zero FIR, electronic communication, copy to informant or victim, preliminary enquiry

173. (1) Every information relating to the commission of a cognizable offence, **irrespective of the area** where the offence is committed, may be given **orally or by electronic communication** to an officer in charge of a police station, and if given—

(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;

(ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf:

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant or the victim.

CHAPTER XIII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

173. (3) Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence,—

- (i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or
- (ii) proceed with investigation when there exists a prima facie case.

Addition to S. 173(4) BNSS [S. 154(3) CrPC; SP shall investigate]:

“... failing which such aggrieved person may make an application to the Magistrate.”

[u/s. 175 (3)]

CHAPTER XIII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

New Provisions:

- S. 174 (1)(ii) [Information as to non-cognizable cases]

Forward the daily diary report of all such cases fortnightly to the Magistrate.

- Information is about NC within limits of PS

- SHO to enter information in a book

- S. 175 [Police officer's powers to investigate cognizable case]

- Proviso to Sub-s. (1) gives SP powers to investigate himself or require DySP to investigate, considering nature and gravity of the offence

- In Sub-s. (3) JM may order investigation u/s. 175 upon receipt of application u/s. 173(4)

- In Sub-s. (4) JM may take cognisance in complaint against public servant arising in course of discharge of official duties, subject to:

1. Receipt of report by officer superior to him regarding facts of incident
2. After consideration of assertions by said public servant

CHAPTER XIII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

New Provisions:

- S. 176 [Procedure for investigation]
 - Proviso to Sub-s. (1): statement to be recorded through **AV means**, preferably cell phone [statement of victim in case of rape]
 - Sub-s. (2): forward daily diary report **fortnightly** to the Magistrate in re case u/1(a) & (b):
 - (a) case not of serious nature; (b) no sufficient ground for entering into investigation
 - Sub-s. (3): information regarding offences with seven years imprisonment or more, OIC shall cause the forensics expert to visit the crime scene and **collect forensic evidence + videography of process on mobile or other electronic device**
 - Proviso to Sub-s. (3): if forensics facility unavailable, utilise facility of another State until own not developed
- S. 179 [attendance of witness]
 - Proviso to Sub-s. (1): Statement of person with acute illness also to be taken at residence [added to 15 yrs male, women, 60+, mentally ill]
 - Second proviso to Sub-s. (1): if person willing to attend police station, may be permitted to do so

CHAPTER XIII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

New Provisions:

- S. 183 [Recording of confessions and statements]
 - Sub-s. (1): Only by Judicial Magistrate in whose district the information about offence has been registered, irrespective of jurisdiction to try the case may record confession and statement
 - Proviso [same as before]: may record through AV means, in presence of advocate
 - First proviso to Sub-s. (6) [offences against women]: *“...statement shall, as far as practicable, be recorded by a woman Magistrate and in her absence by a male Magistrate in the presence of a woman”*
 - Second proviso to Sub-s. (6) [mandatory recording of statement of witness]: *“...in cases relating to the offences punishable with imprisonment for ten years or more or with imprisonment for life or with death, the **Magistrate shall record** the statement of the witness brought before him by the police officer”*
 - Fourth proviso to Sub-s. (6) [recording of statement of disabled person with help of interpreter]: audio-visual electronic means, preferably cell phone

CHAPTER XIII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

New Provisions:

- S. 184 [Medical examination of victim of rape]

Sub-s. (6): RMP shall within a period of seven days forward report to IO to shall forward it to Magistrate as part of documents u/s. 193 [chargesheet]

- S. 185 [Search by police officer]

- Sub-s. (1): Reasons for search (grounds of belief) to be recorded in case diary by IO

- Proviso to Sub-s. (2): Search shall be recorded by AV means, preferably mobile phone

- Sub-s. (5): Record of reasons for search (Sub-s. 1) & deputing subordinate officer to make search (Sub-s. 3) shall be sent to nearest Magistrate **within 48 hours**

CHAPTER XIII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

New Provisions:

- S. 187 [Procedure when investigation cannot be completed within 24 hours]: JM to account for status of bail, 15 day PC spread over 40 or 60 days for detention period of 60 or 90 days as the case may be
 - Sub-s. (2): The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, **the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days**, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.
 - 2nd proviso to Sub-s. (5): Person only to be detained in PS (PC), prison (JC), place declared as prison by CG/SG [no house arrest]

CHAPTER XIII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

New Provisions:

- S. 190 [Cases to be sent to Magistrate when evidence is sufficient]:
 - **Proviso to Sub-s. 1:** police to take security from person for appearance when not in custody, and Magistrate bound to accept it
“Provided that if the accused is not in custody, the police officer shall take security from such person for his appearance before the Magistrate and the Magistrate to whom such report is forwarded shall not refuse to accept the same on the ground that the accused is not taken in custody.”
- S. 193 [Report of police officer on completion of investigation]:
 - **Sub-s. 2:** Rape and **POCSO** time limit of 60 days
 - **Sub-s. 3(ii):** Police shall inform progress of investigation within 90 days to information or victim [through any means, including electronic]
 - **Sub-s. (8):** Responsibility of IO to submit copies of CS (including documents) to JM for supply of accused [earlier, “convenient to do so”, now an obligation];
 - **Proviso to Sub-s. (8):** supply of report and other documents by electronic communication shall be considered as duly served.

CHAPTER XIII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

New Provisions:

- S. 193 [Report of police officer on completion of investigation]:
 - Sub-s. 9: Further investigation in accordance with form provided by SG rules [earlier “form prescribed”]
 - Proviso to Sub-s. (9): Further investigation during trial may be permitted by Court trying the case, to be completed within 90 days, extension with permission of Court
- S. 194(2) [Police to enquire and report on suicide]:

Inquest report to be forwarded to DM or SDM within 24 hours
- S. 195 [Inquiry by Magistrate into cause of death]:
 - By nearest judicial magistrate in cases u/cl. (i), (ii), (iii) of s. 194(3) [earlier Magistrate empowered to hold inquests]
 - Any Magistrate so empowered in any other case of s. 194(1)

OTHER IMPORTANT CHANGES

1. S. 479 [Maximum period for which undertrial prisoner can be detained] – those facing multiple offences, or cases will not be released after serving 1/2 of their, sentence pending trial; first time offenders can be released on 1/3rd of max imprisonment
2. Time limits in the Court process: discharge application [s. 250 – within 60 days of committal], framing of charge [s. 251 – within 60 days of first hearing], acquittal/conviction [s. 258 – within 3–45 days of completion of arguments], trial to be held day-to-day basis and conditions for granting adjournments adjournments [s. 346(2)]
3. Accused can be present in Court electronically [S. 251(2)]
4. Recording of witness, public servant deposition by AV means [S. 254]
5. All trials, inquiries, proceedings u/BNSS may be held through electronic mode [s. 530]
6. Evidence for offences committed outside India can be received in electronic form [s. 209]
7. Evidence of public servants/experts [s. 336] – can call successor officer, use AV, expert/public servant not to be called unless report disputed
8. Inquiry, trial, judgment in absentia of proclaimed offender [s. 356]
9. State Government obligated to prepare and notify a Witness Protection Scheme [s. 398]
10. Mercy Petition in Death Sentence cases [s. 472 – timelines of 30/60 days etc.]
11. Summary trial mandatory for specified offences such as theft, breach of peace – [s.283 – “may” substituted with “shall”]; person accused of offence may file application of plea bargaining within 30 days of framing of charges [s. 290]

BHARTIYA SAKSHYA ACT: IMPORTANT CHANGES

1. Definition of primary evidence [S. 62] expanded to include:

1. Electronic/digital records, every file is a primary evidence (if multiple files)
2. If electronic/digital record produced from proper custody, it is primary evidence
3. Video recording simultaneously stored in electronic form and transferred/broadcasted, each stored recording is primary evidence
4. When a record is in multiple storage spaces in a computer resource, all spaces are primary evidence

2. Definition of secondary evidence [s. 58] expanded to include:

1. oral admissions;
2. written admissions;
3. evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.

3. Secondary evidence can be given when original is a public document u/s. 74 [public records etc.]

4. Admissibility of electronic records [S. 63]

- "semiconductor memory" storage system accounted for
- computer network, multiple computers treated as one computer for the purpose of this section

BHARTIYA SAKSHYA ACT: IMPORTANT CHANGES

5. Proper custody of documents - S. 80, 81

6. Admissibility of electronic records, digital signatures on the same footing as other documents [S. 61]

7. S. 90 [Presumption as to electronic messages]:

“The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.”

